IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 363 OF 2004

Vilas Sopan Tathe ..Applicant.

V/s.

Rohidas Dnyandeo Satpute & Anr. ..Respondents.

Shri P.B. Shah for the Applicant.
Shri L.K.Tripathi for Respondent No.1.
Shri K.V. Saste, APP for Respondent - State.

CORAM : A.M.KHANWILKAR, J.
DATED : DECEMBER 22, 2004

PC :-

. Heard counsel for the parties. In view of concurrent view taken by two courts below, I see no reason to interfere. The only argument canvassed before this court is that the legal notice sent by the complainant to the applicant by registered post was admittedly not served as the same was returned with the remark that addressee not found on the address. The trial court has considered this aspect and in my opinion, rightly answered the same against the applicant. It is noted that besides the legal notice sent by registered post, another legal notice was sent through post as well as under certificate of posting.

The onus of service of legal notice has been discharged by sending it under certificate of posting. The applicant accused failed to rebut the fact that the said communication was disrupted and was factually not served on the applicant. If it is so, no fault can be found with the conclusion reached by the trial court about service of the legal notice on the applicant accused. To get over this position, Shri Shah for the applicant submits that court below has not addressed to the contention of non-service of legal notice at all, though such a plea was specifically raised. This submission overlooks the position that as there is no reference in the impugned order that such a plea was specifically raised at the time of argument. No specific asserstion has been made in the memo of petition as filed before this court that such a plea was actually canvassed at the time of oral argument by the counsel for the applicant but not referred in the impugned judgement. There is no reason to doubt the correctness of the judgment as there is no mention in the judgment that such a plea was raised and therefore, the argument that the appellate court has not considered the said contention, cannot be entertained. Reliance was placed on ground No.3 in the petition filed before

this court. That ground is without any foundation regarding the fact that such a plea was actually argued before the court during the course of oral arguments. In any case, the view taken by the trial court on the point of service of the legal notice does not require any interference by this court. Hence, no case for exercise of revisional jurisdiction. Dismissed. The application is disposed of accordingly.

. At this stage, Shri Shah for the applicant prays for four weeks time. I see no reason to show this indulgence. Prayer is rejected.

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